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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic,
Social and Cultural Rights

KENYA

The Committee considered the state of implementation by Kenya of the economic, social and cultural rights contained in the Covenant at its 4th and 19th meetings held on 17 and 27 May 1993, and adopted 1/ the following concluding observations:

A. Review of the implementation of the Covenant in relation to States parties which have failed to report

1. At its seventh session, the Committee on Economic, Social and Cultural Rights decided to proceed to a consideration of the state of implementation of the Covenant on Economic, Social and Cultural Rights in a number of States parties which, despite many requests to do so, have not fulfilled their reporting obligations under articles 16 and 17 of the Covenant.

2. The purpose of the reporting system established by the Covenant is for the States parties to report to the competent monitoring body, the Committee on Economic, Social and Cultural Rights, and through it, to the Economic and Social Council, on the measures which they have adopted, the progress made, and the difficulties encountered in achieving the observance of the rights recognized in the Covenant. Non-performance by a State party of its reporting

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1/ At the 19th meeting (eighth session), held on 27 May 1993.

obligations, in addition to constituting a breach of the Covenant, creates a severe obstacle for the fulfilment of the Committee's functions. Nevertheless, the Committee has to perform its supervisory role in such cases, and must do so on the basis of all reliable information available to it.

3. In situations in which a government has not supplied the Committee with any information as to how it evaluates its own compliance with its obligations under the Covenant, the Committee has to base its observations on a variety of materials stemming from both intergovernmental and non-governmental sources. While the former provide mainly statistical information and apply important economic and social indicators, the information gathered from the relevant academic literature, from non-governmental organizations and from the press tends by its very nature, to be more critical of the political, economic and social conditions in the countries concerned. Under normal circumstances, the constructive dialogue between a State party reporting and the Committee will provide an opportunity for the government concerned to voice its own view, and to seek to refute such criticism and convince the Committee of the conformity of its policies with what is required by the Covenant. Non-submission of reports and non-appearance before the Committee deprives a government of this possibility to set the record straight.

B. Kenya - Introduction

4. Kenya has been a party to the Covenant since 3 January 1976, the date of its entry into force. Since then, it has not submitted a single report. The Committee strongly urges the Government of Kenya to live up to its reporting obligations as soon as possible so that the Covenant on Economic, Social and Cultural Rights can be given full effect, for the benefit of the people of Kenya. The Committee emphasizes that it considers the non-performance by Kenya of its reporting obligations not only as a violation of the Covenant but also as a grave impediment in the way of an adequate application of the Covenant.

C. Factors and difficulties impeding the application of the Covenant

5. The Committee takes note of the fact that performance by Kenya of the obligations arising from the Covenant on Economic, Social and Cultural Rights cannot be evaluated without taking into consideration the political, economic and social conditions in which the country finds itself at present. Kenya is currently suffering severe political as well as economic turbulence. The transition from the one-party rule exercised by KANU to a truly democratic multi-party system seems to be underway, albeit slowly, and in the face of numerous obstacles set up by those in power. Frictions appear to be severe in all domains of public life, culminating in violent clashes among certain ethnic groups which have cost more than a thousand lives so far. Conditions are aggravated further by the influx of a large number of refugees and displaced persons as well as by the persistent draught in some parts of the country.

6. The Committee notes that, in the economic field, the international donor community, the World Bank and the International Monetary Fund in particular, are calling for a thorough liberalization of Kenya's economy and finances, a system hitherto marked by pervasive State interventionism. From the viewpoint of the Covenant and its interpretation by the Committee, any reform measures must be accompanied by the adoption of targeted programmes designed to protect

Further the enforcement of minimum wages does not seem to be adequately secured in practice. Generally, wages have not kept pace with the high rise in the rate of inflation.

13. Concerning the rights contained in article 8 of the Covenant, the Committee is of the view that the domination of the Central Organization of Trade Unions (COTU) by KANU appears to contravene the letter and spirit of the Covenant. The same observation appears to be valid with regard to the regulation of the right to strike in the Trade Disputes Act.

14. With regard to article 9 of the Covenant, the Committee expresses its concern that married women whose husbands are in taxable employment cannot participate in the scheme of the National Hospital Insurance Fund. The Committee is also concerned by reports of large-scale mismanagement of the National Social Security Fund.

15. Concerning the rights recognized in article 10 of the Covenant, the Committee expresses its profound concern about the fate of the great number of street (parking) children. The public funds earmarked for destitute children appear to the Committee to be pitifully inadequate. Further, the Committee is distressed about the apparent fact that child prostitution is common in many parts of Kenya and that the Government has thus not ensured children the special protection to which the Covenant entitles them.

16. As to the right to an adequate standard of living for everyone recognized in article 11 of the Covenant, the Committee reiterates its grave concern that the current economic and fiscal policies of the Government of Kenya are not designed to secure this right for the overwhelming majority of the population. The Committee notes reports that between 1980 and 1989 no less than 44 per cent of the population - in rural areas 55 per cent - lived below the poverty line. The Committee further notes a distressing inequality in income distribution. The Committee is also concerned about the fact that more than 30 per cent of the population of Kenya are reported to suffer from malnutrition. With regard to the right to adequate housing, the Committee notes with great concern that practices of forced evictions without consultation, compensation or adequate resettlement appear to be widespread in Kenya, particularly in Nairobi.

17. Turning to article 12 of the Covenant on the right to health, the Committee is concerned about the fact that government expenditure on health care appears to be constantly decreasing. It is also concerned that the introduction of fees for treatment in hospitals has its most negative effects on the particularly vulnerable groups and members of Kenyan society.

18. Regarding the right to education, the Committee expresses its concern about the low school attendance of children in the poorest areas of the country and in nomadic communities. The Committee observes that the obligation of States parties to the Covenant to ensure that "primary education shall be compulsory and available free to all" applies in all situations including those in which local communities are unable to furnish buildings, or individuals are unable to afford any costs associated with attendance at school. The Committee also draws the attention of the Government of Kenya to the obligation, contained in article 14 of the Covenant, and applying in cases where free compulsory education has not assured, to "work out and adopt a detailed plan of action for the progressive implementation, within a

reasonable number of years" of the relevant right. The Committee also regrets the significant gender disparities and regional differences with regard to access to education, the significant difference in quality between the government secondary schools and the Harambee or community schools, as well as the difficulties encountered through the introduction of the new 8-4-4 system of education.

19. With regard to the rights recognized in article 15 of the Covenant, the Committee expresses its deep concern about the fact that, according to information available to it, academic freedom in Kenya is still seriously curtailed through intimidation and a variety of measures such as the need for academics to obtain official research and travel clearance. The Committee also regrets the frequent interventions by the government in cultural life through, for example, the banning of plays and the prohibition of certain books and periodicals.

20. The Committee expresses its concern that the policies of the Kenyan government to ensure the protection of the economic, social and cultural rights of women and to discourage violence against, and sexual abuse of, women do not appear to be adequate.

21. The Committee expresses its concern about the marginalization of ethnic minorities in Kenya, particularly of the nomadic pastoralists and the ethnic Somalis in the North Eastern Province.

D. Suggestions and recommendations

22. The Committee reiterates its request that the Government of Kenya actively participate in a constructive dialogue with the Committee as to how the obligations arising from the International Covenant on Economic, Social and Cultural Rights can be fulfilled in a more adequate manner. It calls to the Government's attention the fact that the Covenant creates a legal obligation for all States parties to submit periodic reports and that Kenya has been in breach of this obligation for many years.

23. The Committee recommends that the Government of Kenya avail itself of the advisory services of the United Nations Centre for Human Rights in order to enable it to submit as soon as possible a comprehensive report on the implementation of the Covenant in conformity with the Revised General Guidelines adopted by the Committee in 1990 (E/C.12/1991/1) and with particular emphasis on the issues raised and concerns expressed in the present concluding observations.